IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6947 of 1991

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MULIBEN BACHUBHAI BHARWAD - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SAMIR J DAVE for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8, 1.2.9, 1.2.10, 1.2.11, 1.3.1, 1.3.2, 1.3.3,1.3.4
MS MINI NAIR, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 27/07/2007

ORAL JUDGMENT

The petitioner-Bharvad Laxman Vala was the original onwer of the agricultural lands situated at Rajkot. On introduction of the Urban Lands (Ceiling

and Regulation) Act, 1976 (hereinafter referred to as, **“the Act”**), he declared his holding as envisaged by Section 6 of the Act. The said declaration was processed by the competent authority. Pending the matter before the competent authority, the petitioner had applied for exemption under Section 20 of the Act on the ground that the lands in question were cultivated by him and that the same were required for personal cultivation for the maintenance of his family. The said application for exemption came to be rejected on 17th December, 1983.

Since the rejection of the said application, on 13th June, 1984 the competent authority passed order under Section 8(4) of the Act. The final statement under Section 9 of the Act was drawn on 12th July, 1984. The petitioner's holding to the extent of 32,628.50 sq.meters was held to be excess vacant land. Notification under Section 10(1) of the Act was issued on 21st July, 1984. By notification issued on 12th February, 1985 under Section 10(3) of the Act, the excess vacant land was vested in the State Government. Notice under Section 10(5) of the Act for

handing over possession was issued on 6th May, 1986. Before the possession of the excess vacant land could be taken over under Section 10(6) of the Act, the petitioner preferred Special Civil Application No.3188/1986 before this Court to challenge the above referred order dated 17th December, 1983. The said Special Civil Application No.3188/1986 came to be dismissed on 6th December, 1990 (Coram : G.T.Nanavati, J. as he then was, and S.D.Shah, J.). Since the aforesaid order dated 6th December, 1990, according to the State Government, the possession of the excess vacant land was taken over on 10th October, 1991 as envisaged by Section 10(6) of the Act.

Mr.Dave has joined issue at this juncture. Mr. Dave has submitted that the alleged possession taken over by the State Government is not in accordance with Section 10(6) of the Act, is not legal and valid. He has relied upon the further affidavit made by the petitioner. He has submitted that the possession of the land is with the petitioner till the date. The petitioner is in possession of the

excess vacant land and the petitioner has been cultivating the said excess vacant land. He has submitted that in view of the Urban Lands (Ceiling and Regulations) Repeal Act, 1999 (hereinafter referred to as, **"the Act of 1999"**), all proceedings pending under the Act in respect of the excess vacant have stood abated.

It appears that after the above referred order dated 6th December, 1990 made on Special Civil Application No.3188/1986, the petitioner once again made application for reconsideration of his application for exemption under Section 20 of the Act made in respect of the excess vacant land. The said application/representation came to be rejected on 14th August, 1991. It is the said order dated 14th August, 1991 which is the subject matter of challenge in the present petition. The only relief claimed by the petitioner is that his application for exemption made under Section 20 of the Act ought to have been granted. It would not be out of place to mention here that at no point of time the petitioner challenged the final statement made under Section 9 of the Act

either before the Urban Land Tribunal or before this Court. Nor did he challenge any of the notifications or notices issued under various sub-sections of Section 10 of the Act. In absence of any such challenge, the question whether the petitioner is still in possession of the excess vacant land or whether the taking over of possession by the State Government under Section 10(6) of the Act is legal and valid, is not germane or relevant to the present petition.

Ms.Nair has submitted that once the application for exemption under Section 20 of the Act was rejected and the writ petition preferred before this Court was dismissed, the second application for exemption made by the petitioner on 1st May, 1991 was not maintainable and was rightly rejected by the State Government. In support thereof, she has relied upon the judgment of this Court in the matter of **Anilbhai Dwarkadas Patel and another v/s. State of Gujarat and others** [1993(1) GLH 1067]. She has particularly relied upon paragraph 24 of the judgment. This Court has held that repeated

application for exemption after rejection of the first application was not maintainable. It has been observed that, **“By allowing a person to repeat application on the same ground, it may defeat the very purpose and object of the Act.”**

The petitioner's application for exemption under Section 20 of the Act was rejected as far back as on 17th December, 1983. The challenge to the said order before this Court also failed. The present petition in the same subject matter is not maintainable and deserves to be dismissed. Besides, in view of the repeal of the Act by the Act of 1999, the question of granting exemption under Section 20 of the Act should not arise.

For the aforesaid reasons, the petition is dismissed. Rule is discharged. The parties will bear their own cost.

Mr.Dave requests that the status quo ordered to be maintained pending this petition be extended. Request is granted. The parties will maintain status

quo as to the excess vacant land till 3rd September, 2007.

It is clarified that this Court has not examined the validity of the action of the State Government in taking over possession of the excess vacant land under Section 10(6) of the Act. The petitioner will be at liberty to challenge such action in a substantive proceeding, if otherwise maintainable.

(Ms. R.M.Doshit, J.)

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